

91-442

No.

Supreme Court, U.S.

FILED

SEP 9 1991

OFFICE OF THE CLERK

IN THE  
Supreme Court of the United States  
OCTOBER TERM, 1991

HOWARD E. WILLIAMS

PETITIONER/APPELLANT

v.

CITY OF NORTHPORT, ET. AL.

RESPONDANTS/DEFENDANTS

PETITION FOR WRIT FOR CERTIORARI FROM  
U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

WILLIAM M. DAWSON

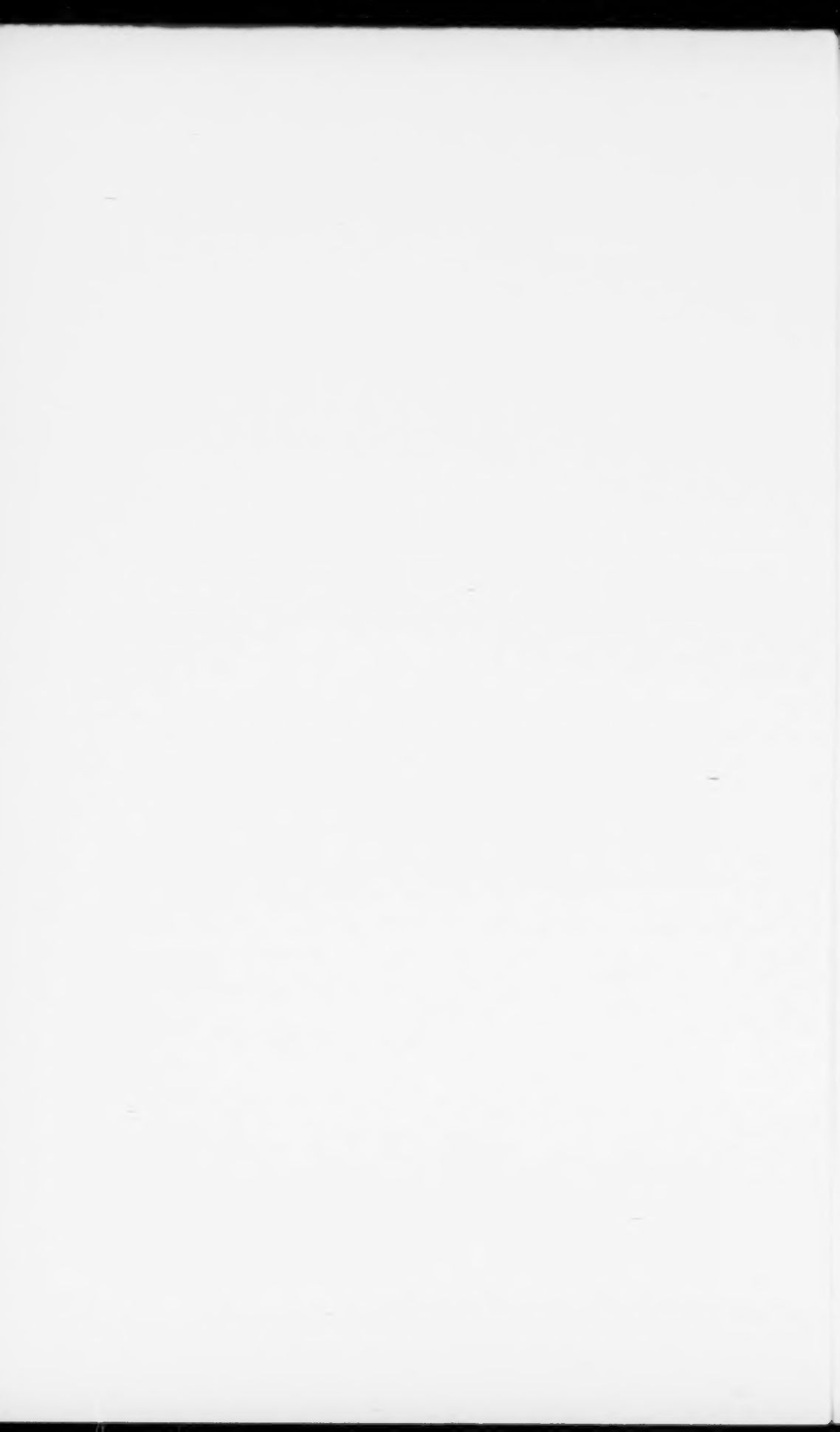
ATTORNEY AT LAW

Suite 490 Park Place Tower

2001 Park Place North

Birmingham, Alabama 35203

498



## QUESTIONS PRESENTED FOR REVIEW

I. WHETHER A FINAL JUDGMENT OF THE U.S. Court of Appeals, Eleventh Circuit, affirming the erroneous decision of the U.S. District Court, Northern District of Alabama on issues of stigmatization and liberty rights under 5th and 14th Amendments to U.S. Constitution is in violation of prior decisions of the U.S. Court of Appeals, Eleventh Circuit [See Clemons v. Daugherty County, Georgia, 684 F. 2d 1365 (11th Cir., 1982), precludes summary judgment on issue of stigmatization, and Buxton v. City of Plant City, Fla. 871 F. 2d 1037, (11th Cir., 1989), held that a personnel file of a police officer is a public record,] when violation of constitutional rights triggers the 42 U.S.C. § 1983 civil rights claim and this erroneous affirming the lower federal court deprives the Petitioner of his property and liberty rights without Due Process of law guaranteed to him by Fifth and Fourteenth Amendments to the U.S.

## QUESTIONS PRESENTED FOR REVIEW

(CONTINUED)

Constitution and because of improper termination of Appellant/Petitioner and maintaining false documents in his personnel file that was stigmatizing per se, he is permanently disabled physically and mentally after being shot in the line of duty as a police officer?

II. WHETHER A FINAL JUDGMENT OF THE U.S. COURT OF APPEALS, ELEVENTH CIRCUIT, rendered in violation of prior decisions of said Court, deprives Petitioner of the equal protection of the law guaranteed him by the Fourteenth Amendments to the United States Constitution?

PARTIES TO THE PROCEEDING

Howard E. Williams, Petitioner,  
(Appellant and Plaintiff below),  
City of Northport, a municipal corporation,  
Respondent, (Appellee and Defendant below).

Other Defendants/Appellees as listed in title-page of Appellant Brief are: Wayne Rose, Mayor, City Council, Harvey Fretwell, Civil Service Board of City of Northport, Johnny Kirk, Dempsey Marcum, Joel Chandler, Doug Turner, Don Richardson, Mike Bishop, David Simmons, Russ Chappel, W.H. Davidson, Amon Williamson, Thomas G. Walker, Jr., A.D. Christian, Jr., John Quarles, Jr., Dan Lunceford, R.N. Hobson, Richard Looser, Frank Rutherford, Woody Latham, Frank Gray, E.J. James, Jr., Judy Smith, Johnny Williams, Dan Morrison, Mike Richardson, Robert Hasson, Niles Graham, Richard Dickinson, Hayward Nixon, C.J. Cox, Dennis Levins, Joe Huffman, Ray Boswell, and Herbert J. Ellis.

# IV

## TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Table of Authorities .....	v
Opinions Below .....	1
Jurisdiction .....	2
Statement of Case .....	3
Statement of Facts .....	6
Reasons for Granting Writ ....	10
Conclusion .....	23
Certificate of Service .....	24
Appendix .....	a-1

## CITATIONS OF AUTHORITY

	Page
<u>Beard v. Stevens,</u> 373 F. 2d 685, (1987) .....	12,20
<u>Boles v. Blackstock,</u> 484 So. 2d 1077 (Ala. 1986) .....	14
<u>Booth v. United Services Auto</u> <u>Association,</u> 469 So. 2d 1281 (Ala. 1985) .....	15
<u>Buxton v. City of Plant City, Fla.</u> 871 F. 2d 1037 (11th Cir. 1989)..i,	13,14 18,23
<u>Clemons v. Daugherty County,</u> <u>Georgia,</u> 684 F. 2d 1365 (11th Cir., 1982) .....	i,13,14 16,17,23
<u>Ex parte Neal,</u> 551 So. 2d 933 (Ala. 1989) .....	10
<u>Edwards v. Habib,</u> 397 F. 2d 686 (D.C. Cir. 1968) ...	24
<u>New York Times Co. v. Sullivan,</u> 373 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964) .....	24
<u>Northern Cheyenne Tribe v. Northern</u> <u>Cheyenne,</u> 505 F. 2d 268, (9th Cir. 1974) .....	10
<u>Pruitt v. Elliott,</u> 460 So. 2d 1275, (Ala. 1984) ....	15
<u>Seibold v. Daniels,</u> 337 F. Supp. 210, (U.S. Dist. Court, M.D. Ala., 1972) .....	11,21
<u>Southwestern Petroleum Corp. v. Udall,</u> 361 F. 2d 650 (10th Cir., 1966) ...	10

<u>Standard Oil Co. v. Graves,</u> 49 S Ct 320, 249 U.S. 389, 63 L. Ed. 662, .....	21
<u>Stark v. Troy State University</u> 514 So. 2d 46 (Ala. 1987) .....	14
<u>Velger v. Cawley,</u> 525 F. 2d 334 (2nd Cir., 1975) .....	18
 <u>U.S. Constitution</u>	
5th Amendment .....	3
14th Amendment .....	2, 3

No.

---

---

IN THE  
Supreme Court of the United States

OCTOBER TERM, 1991

HOWARD E. WILLIAMS

PETITIONER/APPELLANT

v.

CITY OF NORTHPORT,

RESPONDANTS/DEFENDANTS

PETITION FOR WRIT FOR CERTIORARI FROM  
U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

OPINIONS BELOW

The Petitioner/Appellant incorporates all the statements in the Opinions Below, and are stated in the Appendix to this Writ of Certiorari and incorporated as "Opinions below". The first order and opinion was dated March 15, 1990, and is reprinted in the appendix. The second opinion and order was filed April 16, 1990, and then a Notice of Appeal was timely filed on April 19, 1990, and and is the instant case from the U.S. Court of

Appeals, Eleventh Circuit, as case no. 90-7300, and all opinions below are printed in appendix. No opinions were written when the U.S. Court of Appeals affirmed on April 2, 1991, and denied the rehearing on June 11, 1991.

### JURISDICTION

The Judgment of the U.S. Court of Appeals, Eleventh Circuit, of which review and reversal are sought, is the Judgment of appellate federal court, U.S. Court of Appeals, Eleventh Circuit, and in instant case, a decision inconsistent with previous law cases cited above p. i, and a final Judgment within the meaning of the Jurisdictional statute. Jurisdiction is therefore, invoked under title 28, United States Code, Section 1257 (3).

#### Constitutional

#### Provisions involved

Amendment XIV of the Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person

of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall ... be deprived of life, liberty or property, without due process of law;"

#### STATEMENT OF THE CASE

This is an employment civil rights case involving the violation of police officer's wrongful discharge from work when he was disabled after being shot in the line of duty, and violation of the due process and trespass on person and liberty in wrongful discharge with violation of First, Fifth, and Fourteenth

Amendments to U.S. Constitution i.e. Cause of action under 42 U.S.C. § 1983 and 42 U.S.C. § 1985 with pendent state claim of libel. R-1-6 [Civil Cover sheet 89-T-747-N, U.S. District Court, Middle District of Alabama].

The original Complaint [R-1-1] was filed on July 17, 1989, in Montgomery, Alabama, in the U.S. District Court, Middle District of Alabama.

On August 14, 1989, the Hon. Judge wrote an order granting the change of venue motion and transferring the instant case, to the U.S. District Court, Northern District of Alabama [R-1-43-1]. The case no. in the U.S. District Court, Northern District of Alabama, was CV 89 -P-1615-W.

Answer was filed on October 26, 1989 and Nov. 2, 1989.

On March 15, 1990, the Hon. Judge entered his order "terminating case that pla's claims other than the claim of libel through republication of libelous material are dismissed with prejudice; pla's republications claim is

dismissed without prejudice;..." [R-3-54-1], together with an Opinion dated March 15, 1990, [R-3-53-1 through 2].

On April 16, 1990, the Hon. Court entered an order granting the Motion for Reconsideration but not in favor of Plaintiff which was equivalent to denying the motion for reconsideration, [R-3-61-1], which granted Motion for Summary Judgment after the Honorable Court had already dismissed all claims except libel, and the Honorable Court had failed to take jurisdiction of the state claim [R-3-54-1 and R-3-53-1 through 2]. The order [R-3-61-1] also wrongfully did not allow the amendment to the complaint, which is a violation of the 5th and 14th Amendments to the U.S. Constitution because of the confusion concerning whether what standard was being used to terminate the case, i.e. whether the "set of facts" for a cause of action for Motion to Dismiss or whether there was any genuine material issue left in the case that a summary judgment could be granted as a matter of law.

On April 19, 1990, the Plaintiff filed a Notice of Appeal, which was appealing the order dated April 16, 1990, and this Notice of Appeal was timely filed and is the instant case on appeal as case no. 90-7300. [R-3-62-1].

#### STATEMENT OF THE FACTS

Howard Earl Williams, plaintiff/appellant/petitioner is a former police officer of the municipal corporation, the City of Northport, who employed Mr. Williams as a police officer on or about January 23, 1978 [R2-8-3].

There has been a power struggle and an ongoing political [R2-42-31-32]vendetta taking place in the police department since the time in January of 1981 that the Petitioner, Howard Williams, along with Defendant Marcum and David Simmons, former police sergeant, and Howard Williams' shift supervisor at the time, were certified candidates for the position of Police Chief, with Mr. Williams being the number one candidate by the Council and Civil Service Board before the conspiracy was activated by Defendants Demsey Marcum, David Simmons, and others [see complaint] and the City

of Northport, and the Civil Service Board acted in conspiracy with the full knowledge, and understanding with common scheme to destroy the reputation and stigmatize Mr. Williams so that he would never be able to work on any job, and the City of Northport, did keep false documents in the personnel file that were discovered Feb. 1990, at deposition of Mr. Russ Chappel. Therefore, the statute of limitations for stigmatization has not yet run at the time of writing this Writ.

See R-2- Deposition 42, [Robertson] and note Plaintiff's Exhibit 2, the trumped up criminal charges since Mr. Marcum became Chief in 1981 [R-2-8-4].

The Plaintiff did not receive proper due process in his termination hearing in April 15, 1987 [See Px Exhibit 5, and Px Exhibit 6, attached to R-2-42- Deposition by Hon. Robertson, former Mayor of the City of Northport. Plaintiff/Appellant/Petitioner incorporates all the facts presented in Appellant Brief to the U.S. Court

of Appeals, Eleventh Circuit, and will be presented in Merits Brief if Writ of Certiorari is granted.

See Plaintiff's Exhibit 72 and duplicate Plaintiff's Exhibit 75 from the Personnel file of Mr. Williams [R-3-46-Russ Chappell deposition], in which the following stigmatizing statement is in the second from last paragraph of a letter from J. Dempsey Marcum, to Hon. Robert P. Reynolds which states,

"He was dismissed from the Winfield Alabama Police Department for assaulting a female by severing her breast nipple by biting it off." This false statement in the Personnel file of Mr. Williams is clearly reckless stigmatizing with intention of making sure Mr. Williams was hired by no one. The date for republication starts Feb. 1, 1990, the date of Mr. Russ Chappell's deposition, in which it was clearly shown that the date is in the year 1990, which meets the statute of limitations for Plaintiff's exhibits 72 and 75 for republication from the

Personnel file of the City of Northport which is a public record [R-2-42-13-lines 3-10 of the Hon. Robertson's deposition].

It is to be pointed out that the City of Northport terminated Mr. Williams when he was disabled and handicapped since he was shot in the line of duty on April 16, 1986.

The former police officer, the Plaintiff Williams, had a property right in his continued employment to have proper due process when terminating including notice and an opportunity to be heard.

The City of Northport, on April 15, 1987, failed to show any due process since Mr. Williams was sick to attend himself, and there was no attorney to represent him at the one-sided hearing.  
[R-2-8-10].

The actions of Defendants in depriving Plaintiff of his due process rights resulted in loss of his employment with the City of Northport, which is a violation of the 5th and 14th Amendments to the U.S. Constitution and the triggering the violation of 42 U.S.C. § 1983 cause of action.

## REASONS FOR GRANTING THE WRIT

The Federal courts have said that under the Fifth Amendment to the United States Constitution rights incident to ownership cannot be divested by actions of the United States without due process of law. Northern Cheyenne Tribe v. Northern Cheyenne, etc. 505 F. 2d 268, (9th Cir. 1974), Southwestern Petroleum Corp. v. Udall, 361 F. 2d 650 (10th Cir. 1966). It is equally important that deprivation by Judicial decision rather than by legislation, be required to comply with due process.

See Exparte Neal, 551 So. 2d 933 (Ala. 1989), which held jury determines mental competency.

Mr. Williams is both physically and mentally disabled as a direct result of being shot in the line of duty as police officer and has been declared 100% disabled by the Social Security, and Mr. Williams has not received proper due process for his wrongful termination after he became a handicap. [R-2-42, p. 1-4 of

Plaintiff's Exhibit 6], also [R-2-8-10], when Mr. Williams was disabled because of shooting and the City of Northport, failed to show due process on April 15, 1987, when Mr. Williams was terminated without an attorney and unable to come to the hearing because he was sick.

See Seibold v. Daniels, 337 F. Supp. 210, (U.S. Dist. Court, M.D. Ala., 1972), which held,

"A state statute cannot be construed to obviate a constitutional requirement."

Alabama State law as cited in Appendix D opinion, cannot be construed to block the constitutional rights of a citizen, Mr. Williams to due process and liberty rights in the courts, because Mr. Williams was truly stigmatized by keeping of false files in his personnel file [Plaintiff's Exhibits 72, 75, 76, etc] and further on August 2, 1989, a newspaper republished libelous statements about Mr. Williams and was in the record of the court, and therefore, the state-

ment by the lower federal court in the Appendix D opinion is incorrect, [R-3-60-3] which states,

"Plaintiff has failed to show any publication of allegedly stigmatizing material within the last two years." is a false statement.

See R-1-20, Exhibit A, showing stigmatizing material dated August 2, 1989. See Beard v. Stevens, 373 F. 2d 685 (1987), concerning trespass on the person, which is a six-year statutes of limitations for civil rights. Further, the stigmatization that was discovered Feb. 1, 1990, was a continuous stigmatization since the said false files [Exhibits 72, 75, 76, etc.] were found in the personnel file at Mr. Russ Chappel's deposition, and the former Mayor Hon. Robertson stated the personnel file was a public record. [R-2-42-13-lines 3-10 of the Hon. Robertson's deposition]. Stigmatization is an issue in proving liberty rights under the 5th and 14th Amendments to U.S. Constitution, and

especially since no due process was shown Mr. Williams civil rights which is a trespass on his person were violated and Mr. Williams has a claim under the 42 U.S.C. § 1983 claims and § 1985 claims as originally stated in his complaint, and the amended complaint that was allowed.

The City of Northport et al clearly have failed the standard for summary judgment, in that there are numerous disputed facts concerning the stigmatization of Mr. Williams as a police officer, and the Summary Judgment granted after the fact, i.e. the order granted on April 16, 1990, [R-3-61-1] granting summary motions after already granting Motion to Dismiss the case, and not accepting jurisdiction of the pendent libel claim is clearly reversible error under the Clemons v. Daugherty County, Georgia, 684 F. 2d 1365 (11th Cir., 1982), and Buxton v. City of Plant City, Fla., 871 F. 2d 1037 (11th Cir. 1989). The stigmatization issues is a republication and the statute of limitations had not expired and the stigmatization issue is clearly a disputed fact issue

and summary judgment should have been precluded [see Clemons v. Daugherty case above.]

Writ of Certiorari should be granted and brief on merits allowed to be written.

Clearly, there is a stigmatization issue and because it has been done deliberately and intentionally by City of Northport et al., leaving false documents in the personnel file of Mr. Williams, [R-3-46 and R-3-42, Exhibits], and the Defendants deny stigmatization, [R-2-17-1] there is a "set of facts" justifying a cause of action [See Stark v. Troy State University, 514 So. 2d 46 (Ala., 1987), and Boles v. Blackstock, 484 So. 2d 1077 (Ala. 1986)].

The U.S. Court of Appeals, Eleventh Circuit, has been inconsistent as to prior law, especially Clemons v. Daugherty County, Georgia, 684 F. 2d 1365 (11th Cir., 1982), which held that stigmatization precludes summary judgment. Also see Buxton v. City of Plant City, Fla., 871 F. 2d 1037, (11th Cir. 1989), because a personnel file of a police officer is a public record [R-2-42-13, Deposition of the Hon. Robertson, former Mayor of the City of Northport].

There is no doubt about it that the Defendants failed the standard of review for the elements of granting a Summary Judgment, because of the numerous disputed facts as discussed in the Statement of the Facts, including stigmatization which precludes summary judgment.

The elements of summary judgment are found in the following two cases:

See Booth v. United Services Auto Association, 469 So. 2d 1281 (Ala. 1985), which states,

"To grant summary judgment, trial court must find that there is no genuine issue of material fact and that movant is entitled to judgment as matter of law. Rules Civ. Proc., Rule 56."

Also see Pruitt v. Elliott, 460 So. 2d 1275, (Ala. 1984), which states,

"Summary judgment is proper when there is no genuine issue of material fact and moving party is entitled to judgment as matter of law, all reasonable doubts concerning existence of genuine issue of fact must be resolved against moving party. Rules Civ. Proc., Rule 56 (c).

In the deposition of Russ Chappell [R-3-46 and R-3-52 the Exhibits attached from the personnel file of Mr. Howard Williams, the Plaintiff/Appellant/ Petitioner, clearly showing stigmatizing of Mr. Williams in a reckless and intentional and deliberate attempt to permanently damage the reputation of Mr. Williams as a police officer, and now after keeping these false documents in the personnel file Mr. Williams will never find a position as police officer or any other type of job [R-3-46-Exhibits 72, 75, 76 (the trumped up criminal charges including robbery by force when there never was a robbery)]. The trumped up criminal charges are also in the Deposition of Hon. Robertson [R-2-42 as Plaintiff Exhibit 2].

Also see Buxton v. City of Plant City, Fla., 871 F. 2d 1037, (11th Cir., 1989) which states,

"In determining whether publication of stigmatizing information constituted deprivation of

public employee's liberty interest under Fourteenth Amendment, public employee was required to prove false statement of stigmatizing nature attending his discharge made public by governmental employer without meaningful opportunity for employee to clear his name. U.S.C.A. Const. Amend. 14."

This Buxton case also held that the placing of stigmatizing information in a public employee's personnel file or in an internal affairs report constitutes publication sufficient to implicate liberty interests requiring protection through procedural due process of law. The documents discovered during depositions clearly show stigmatization with "stigma-plus" in particular the trumped up criminal charges [R-2-42 Plaintiff's Exhibit 2 and later R-3-46 Plaintiff's Exhibit 76 in the Personnel file of Mr. Howard Williams], which had false charges since there was no armed robbery or embezzlement.

The alleged clearing of Mr. Williams name was not a name-clearing but a stirring up of stigmatization per se of false documents which

the City of Northport maintained intentionally in the personnel file of Mr. Williams to prevent Mr. Williams from ever receiving a job anywhere.

Clearly, the Clemons v. Daugherty County, GA 684 F. 2d 1365 (1982) case is similar to the instant case.

There is no name clearing when the same false documents have showed up in the personnel file in 1990 [R-2-46, Plaintiff's Exhibits 72,75, 76

See Velger v. Cawley, 525 F. 2d 334 (2nd Cir 1975), which states

"When either a deprivation of a property interest, such as in a permanent job, or a deprivation of liberty, such as stigma that operates to foreclose other employment opportunities, results from decision to discharge public employee, due process requires that notice of the charges and a hearing must be granted to the dischargee."

Clearly, there are a set of facts under Count 11, Trespass to Person or Liberty, as and in particular, the maintaining of false documents, trumped up criminal charges,

[R-2-42, Plaintiff's Exhibit 2, and R-3-46, Plaintiff's Exhibit 76 in Personnel file of Mr. Howard Williams], including alleged robbery by force when no robbery by force, and alleged embezzlement when no embezzlement, including fabricated embezzlement papers in personnel file [R-2-46, Plaintiff's Exhibit 76, composite], false information based on hearsay about assault on female [bitting nipple off] [R-3-46-Plaintiff's Exhibit 72 and 75], and "alleged 100% disabled [R-3-52, Plaintiff's Exhibit 89] referring to the alleged fabricated hoax [R-3-47 Plaintiff's Exhibit 27].

There are disputed facts as to whether there was due process in the termination of Howard Williams by City of Northport [R-2-17-1] and Amended Complaint [R-2-9-13].

If the Honorable trial court considered matters outside of the pleadings according to Rule 56, Federal Rules of Civil Procedure, IT IS CLEARLY SEEN THAT THE CITY OF NORTHPORT AND NAMED DEFENDANTS WERE IN DISPUTE AS TO THE ISSUE IN THIS INSTANT CASE.

See Beard v. Stevens, 373 F. 2d 685 (1987) concerning trespass on the person, and in the instant case reckless trespass on the person in violation of his civil rights triggering the 42 U.S.C. § 1983 cause of action.

It is to be pointed out that the stigmatization was not only in the personnel file but adverse publicity, and an ongoing conspiracy to prevent the Plaintiff/Appellant from obtaining a job as a police officer or any type of job.

II. The Judgment of the U.S. District Court for the Northern District of Alabama using Alabama state law when not a diversity of citizenship federal case is using state action and state alleged law which does not apply in the instant case since the Hon. Robertson, former mayor of City of Northport in his deposition stated the personnel file was a public record. [-2-42-13-lines 3-10 of the Hon. Robertson's deposition]. Therefore, the

opinion on state law of Alabama by the Hon. Judge of the U.S. District Court is misapplied law and alleged state action deprives the Petitioner of the equal protection of the law.

See Seibold v. Daniels, 337 F. Supp. 210, (U.S. Dist. Court, M.D. Ala., 1972), which held,

"A state statute cannot be construed to Obviate a constitutional requirement."

See Standard Oil Co. v. Graves, Wash. 1919, 49 S Ct 320, 249 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and it must be judged by its necessary effect, and if that is to violate the Constitution of the United States the law must be declared void." [Emphasis added.]

The point is the federal law is Buxton case cited above, and the Hon. lower court judge of the U.S. District Court was using Alabama law which is not appliable in instant case since the former Mayor of City of Northport, stated personnel file was a public record and clearly the stigmatization in the personnel file that was in the personnel file Feb. 1990, is a violation of Mr. Williams liberty rights under the 5th and 14th Amendments to the U.S. Constitution that triggers in the civil rights § 1983 claims and the U.S. Court of Appeals has ignored the Clemons case as well as the Buxton case in the instant case. Therefore, the Writ of Certiorari should be granted and a merits brief allowed so that the instant case can be reversed and remanded for a trial by a jury on the issue of stigmatization and civil rights violation under 42 U.S.C. § 1983 as stated in the complaint. The statute of limitations is moot in the instant case whether considering the 2-year or 6 year statute of limitations. The keeping of false stigmatizing files in the personnel file

was continuous and clearly within the statutes of limitations when discovered in Feb. 1990. Republication by stigmatization issue on statutes of limitations is moot since stigmatization was ongoing in the personnel file, and res judicats is moot issue for stigmatization wehn republication. also makes any alleged issue or res judicata moot since within 2-years.

The Equal Protection of the law, guranteed in the Fourteenth Amendment, also has been denied to Petitioner by the decision of the U.S. Court of Appeals, Eleventh Circuit, affirming the U.S. District Court, Northern District of Alabama, who denied the Petitioner equal protection by basing decision on Alabama law [see appendix D] instead of federal law which was cited as Buxton v. City of Plant City, Fla. 871 F. 2d 1037 (11th Cir., 1989), because the instant case was not a diversity case but a civil rights case that had transferred from the U.S. District Court, Middle District of Alabama to the U.S. District Court, Northern

District of Alabama. The stigmatizing in the personnel file was a public record according to the former mayor, the Hon. Robertson, who stated the personnel file of a police officer was a public record. [R-2-42-13, Deposition of Hon. Robertson, former Mayor of the City of Northport]. Therefore, the argument in the opinion, Appendix D, is moot as to public record, and the instant case should be decided under the Buxton case as to public record.

The application of state law by the judiciary, even in a lawsuit between private parties, may constitute state action which must conform to the requirements of the Constitution. New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964); Edwards v. Habib, 397 F. 2d 687 (D.C. Cir. 1968).

The U.S. Court of Appeals, Eleventh Circuit, should follow own law in the Buxton case and Clemons case since a former police officer case similar to Clemons case, and the Writ

for Certiorari should be granted, and then a merits brief allowed so that the instant case can be reviewed, and reversed and remanded for a jury trial on the issue of stigmatization and all issues including the civil rights 42 U.S.C. § 1983 claims.

### CONCLUSION

For the above reasons in particular since the U.S. Court of Appeals, Eleventh Circuit, has failed to follow own law as cited, Clemons case, and Buxton case, this Writ for Certiorari should be granted and a Merits Brief allowed to be written, and then the instant case should be reversed and remanded to a trial by a jury concerning the liberty and stigmatization issues disputed in this instant case that precludes summary judgment, and clearly the violation of the 5th and 14th Amendments to U.S. Constitution, constitutional rights of Mr. Williams triggers the 42 U.S.C. § 1983 claims and in this instant case the 42 U.S.C. § 1985 conspiracy claims as well as 42 U.S.C. § 1988.

Respectively submitted,

  
William M. Dawson

Attorney At Law

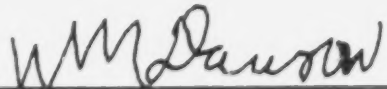
Suite 490 Park Place Tower

2001 Park Place North

Birmingham, Alabama 35203

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the Writ for Certiorari was sent to Mr. Christopher Lyle McIlwain, Hubbard, Waldrop, Reynolds, Davis & McIlwain, 808 Lurleen Wallace Blvd., P.O. Box 2427, Tuscaloosa, Alabama 35403, Mr. W.J. Hust, Zeanah, Hust & Summerford, 7th Floor, Am South Building, Tuscaloosa, Alabama 35401, and Mr. John T. Sutton, Lee, Barret, Mullins, Smith & Smithart, P.C., P.O. Box 2654, Tuscaloosa, Alabama 35403 this 6 day of September 1991.

  
\_\_\_\_\_

1-a

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ALABAMA

WESTERN DIVISION

HOWARD E. WILLIAMS,

Plaintiff

Case no.

CITY OF NORTHPORT,

CV 89-P-1615W

ET. AL.

Defendants

ORDER

For the reasons stated in the accompanying opinion, plaintiff's claims other than the claim of libel through republication of libelous material are DISMISSED with prejudice. Because this court has chosen not to exercise jurisdiction over the republication claim, that claim is DISMISSED without prejudice. Costs taxed against plaintiff.

This the 15th day of March, 1990.

s/Sam C. Pointer, Jr.

United States District Judge

APPENDIX (CONTINUED) B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION  
HOWARD E. WILLIAMS,

Plaintiff

Case no.

vs.

CV 89-P-1615W

CITY OF NORTHPORT,  
ET AL.

Defendants

OPINION

On July 17, 1989, plaintiff filed this action asserting defendants had violated his rights under 42 U.S.C. §§ 1983 and 1985, the Constitution, and state law. Plaintiff complains of several actions taken during the course of his employment with the City of Northport Police Department. Plaintiff also objects to certain statements made about him by various defendants and alleges that placing certain materials in his personnel file constitutes republication of libelous material.

Defendants have filed motions for summary judgment asserting that all of plaintiff's claims have been raised before, and that these issues are therefore res judicata. Defendants also have stated that plaintiff's claims are barred by the applicable statute of limitations.

Plaintiff's employment with the City of Northport was terminated on April 15, 1987. With the exception of his republication claims and claims that the state court review of his termination does not satisfy the requirements of the due process clause, all of the actions of which plaintiff complains occurred prior to his termination more than two years before he filed this action. In Alabama, the statute of limitations for § 1983 and § 1985 actions is two years. Jones v. Preuit & Mauldin, 876 F. 2d 1480 (11th Cir. 1989). Plaintiff's claims, except as noted, fall outside the

two year period and are due to be dismissed.

Plaintiff challenges the adequacy of the post-termination hearing, and of the adequacy of the trial court's review. All of the claims plaintiff now raises regarding the termination and the post-termination reviews were raised on appeal of the state court action. The Court of Civil Appeals of Alabama concluded plaintiff had not been denied due process or otherwise deprived of his rights and upheld the termination. *Williams v. Northport*, 545 So. 2d 65 (Ala. Civ. App. 1989). The claims raised regarding plaintiff's termination are therefore barred by the doctrine of res judicata.

Plaintiff also asserts defendants have republished libelous material about him. Republication of libelous material is not actionable under either § 1983 or § 1985. Because the plaintiff's federal claims are

barred by res judicata or the applicable statute of limitations, there is no basis for this court to exercise jurisdiction over plaintiff's state law causes of action.

This the 15th day of March, 1990.

s/Sam C. Pointer, Jr.

United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION  
HOWARD E. WILLIAMS

Plaintiff

Case no.

vs.

CV 89-P-1615W

CITY OF NORTHPORT,

ET AL.

Defendants

ORDER

Plaintiff's Motion for Reconsideration is GRANTED. This court's opinion of March 15, 1990 is hereby supplemented by the accompanying opinion. Upon reconsideration it is

nevertheless concluded that, as stated in the March 15 opinion as supplemented, Defendants' Motion for Summmary Judgment are due to be GRANTED. Plaintiff's Motion to Amend the Complaint is DENIED. This action is hereby DISMISSED with prejudice; costs taxed against plaintiff.

This the 13th day of April, 1990.

s/Sam C. Pointer, Jr.

United States District Judge

#### APPENDIX D

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION

HOWARD E. WILLIAMS,

Plaintiff

Case no.

vs.

CV 89-P-1615W

CITY OF NORTHPORT,

ET AL.

Defendants

#### OPINION

On March 15, 1990, this court granted defendants's Motion for Summary Judgment

on all of plaintiff's claims. As stated in its opinion, the court granted summary judgment regarding plaintiff's 42 U.S.C. § 1983 claims because the court believed republication of libelous material was not actionable under § 1983. Plaintiff has filed a Motion for Reconsideration and a Motion to amend the Complaint. The Motions for Reconsideration is GRANTED.

In Buxton v. Plant City, 871 F. 2d 1037 (11th Cir. 1989), the Eleventh Circuit held that in light of Florida law regarding accessibility of personnel files of public officials, placing stigmatizing materials in an official's personnel file constituted publication of those materials sufficient to implicate certain due process rights under the fourteenth amendment. Specifically, the Buxton court held that when a Florida city places stigmatizing material in an employee's personnel file, the city must notify the individual that he is entitled to a name-clearing hearing, and must

provide that hearing if the individual requests it. Buxton does not appear to require another name-clearing hearing each time the personnel file is released. Thus, this court may have been correct when it stated that republication does not create a cause of action under § 1983, at least where the issue of stigmatization has been litigated in a prior proceeding. On reviewing the file, however, this court has concluded that there are some items in plaintiff's personnel file which might be considered stigmatizing and as to which that determination has not previously been made. It is therefore necessary to consider whether, under Buxton, the City of Northport published that material by placing it in plaintiff's personnel file. The court concludes that it did not.

Defendants argue that personnel records in Alabama are not as openly accessible as

those of Florida employees, and that therefore the holding of Buxton does not apply to this case. The Florida law applicable in Buxton provided: "all state, county, and municipal records shall at all times be open for a personal inspection by any person."

Fla. Stat. § 119.01 (1987). It was undisputed that the personnel record of a Florida police officer fell into this category. by contrast, under Alabama law "recorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records the disclosure of which would be detrimental to the best interests of the public are some of the areas which may not be subject to public disclosure." *Stone v. Consolidated Pub. Co.*, 404 So. 2d 678 (Ala. 1981). These exceptions are to be applied "only in those cases where it is readily apparent that disclosure will result in undue harm or embarrassment to an individual, or where the public interest

will clearly be adversely affected, when weighed against the public policy considerations suggesting disclosure." *Chambers v. Birmingham News Company*, 552 So. 2d 854 (Ala. 1989). Thus, under Alabama law, an officer's personnel file might not be released for review or, if it is released, stigmatizing material might be removed before an individual is allowed to review the file. That being the case, the act of placing stigmatizing material in a police officer's personnel file in Alabama does not constitute publication of that material. Plaintiff has failed to show any publication of allegedly stigmatizing material within the last two years. Plaintiff's action under § 1983 therefore is barred by the applicable statute of limitations.

Plaintiff requests permission to amend the Complaint "so that each Defendant knows exactly what the Amended Complaint is in

particular the Stigmatization count and trespass on the person and liberty" and "to include newly discovered evidence concerning the infringement on the rights of the plaintiff." That motion is DENIED.

After reconsideration, the court concludes that its decision to grant defendants' Motion for Summary Judgment was correct. This the 13th day of April, 1990.

s/Sam C. Pointer, Jr.

United States District Judge

[Note that the Order, dated March 15, 1990, p. a-1, this Appendix, did not grant summary judgment but dismissed the case and then the order April 13, 1990, granted summary judgment for Defendants using state law instead of federal law, the Buxton case; this was a transfer case within the same state, not a diversity of citizenship case].

APPENDIX E

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA

HOWARD E. WILLIAMS

Plaintiff                      Case no.

v.                                      CV - 89-P-1615W

CITY OF NORTHPORT

ET AL.

Defendants

NOTICE OF APPEAL

Comes now the Plaintiff, Howard E. Williams, through his undersigned attorney, Julia McCain Lampkin Asam, Ph.D., J.D. and files this Notice of appeal from the United States District Court for the Northern District of Alabama to the U.S. Court of Appeals, Eleventh Circuit, because of the erroneous final order rendered on April 16, 1990 in the instant case. The Plaintiff also is filing this Second Notice of Appeal to appeal the statement..."as stated in the March 15 opinion as supplemented,

[which has never been received by the Plaintiff and is not listed in the docket sheets which were certified to the Plaintiff on April 12, 1990] "Defendants' Motions for Summary Judgment are due to be GRANTED." because as a matter of law the Defendants failed to show that there were no disputed facts, and clearly Mr. McIlwain failed to show any law in his Motion for Summary Judgment. See Clemons v. Dougherty County, Georgia, 684 F. 2d 1365, 1368 (11th Cir., 1982). Before filing this second appeal, the Plaintiff filed an Amendment to the Motion for Reconsideration and Notice of filing document showing publication on August 2, 1989, which was not initiated by Julia Asam but Mr. McIlwain gave a comment. The information must have come from Mr. McIlwain since Julia Asam did not supply any information to the press.

Respectively submitted,  
s/Julia McCain Lampkin Asam  
Julia McCain Lampkin Asam  
Attorney At Law  
Suite 10, North View Plaza  
3120 McFarland Blvd.  
Northport, Alabama 35476  
333-1999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the Notice of Appeal was sent to Mr. Christopher Lyle McIlwain, Hubbard, Waldrop, Reynolds, Davis & McIlwain, 808 Lurleen Wallace Blvd., P.O. Box 2427, Tuscaloosa, Alabama 35403, Mr. W.J. Hust, Zeanah, Hust & Summerford, 7th Floor, Am South Building, Tuscaloosa, Alabama 35401, and Mr. John T. Sutton, Lee, Barret, Mullins, Smith & Smithart, P.C., P.O. Box 2654, Tuscaloosa, Alabama 35403 this 19 day of April 1990.

s/Julia McCain Lampkin Asam

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

No. 90-7300

Non-Argument Calendar

D.C. Docket No. 89-P-1615W

HOWARD E. WILLIAMS,

Plaintiff-Appellant,

v.

CITY OF NORTHPORT, ET AL.

Defendants-Appellees,

Appeal from the United States  
District Court for the Northern  
District of Alabama

April 2, 1991

Before KRAVITCH, EDMONDSON AND COX, Circuit  
Judges.

PER CURIAM: AFFIRMED. See 11th Cir. Rule 36-1.

"Costs taxed against plaintiff-appellant."

Judgment Entered: April 2, 1991.

For the Court: Miguel J. Cortez, Clerk

APPENDIX G

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

NO. 90-7300

HOWARD E. WILLIAMS

Plaintiff-Appellant

v.

CITY OF NORTHPORT ET AL.

Defendants-Appellees.

Appeal from the United States District  
Court for the Northern District of  
Alabama

ON PETITION FOR REHEARING

BEFORE: KRAVITCH, EDMONDSON AND COX,  
CIRCUIT JUDGES.

PER CURIAM:

The petition for rehearing filed by  
appellant is denied.

ENTERED FOR THE COURT:

s/E.R. Cox

United States Circuit Judge

Filed June 11, 1991

